In the High Court of Punjab and Haryana at Chandigarh.

CWP No.7980 of 1997

Date of decision: 30.07.2007.

Ram Gulam ....Petitioner

Versus

Haryana Dairy Development Cooperative Federation Limited and others.

....Respondents

CORAM
Hon'ble Mr. Justice Permod Kohli.

Present: Mrs. Abha Rathore, Advocate,for the petitioner.

Mr.Sameer Rathee,Advocate,for the respondents.

PERMOD KOHLI, J.

This writ petition was earlier allowed by the learned Single Judge of this Court vide his judgment dated 03.05.2002. However, in appeal, being Letters Patent Appeal No.731 of 2002, the judgment of the learned Single Judge has been set aside and the case was remanded back for fresh adjudication. The matter has been accordingly heard.

The petitioner-workman is aggrieved of the award dated 14.08.1996 passed by the Presiding Officer, Labour Court-II, Faridabad in reference No.461/93.

It may be useful to briefly refer to the factual background.

The petitioner workman was engaged by respondent No.1 as Lab Attendant in the year 1973. He was promoted as Lab Assistant in September, 1979. Thereafter, he was transferred in Milk Union, Kurukshetra, on deputation in October, 1989. On the allegations of remaining absent from duty for a period of 11 months, disciplinary proceedings were initiated against him. The Inquiry Officer, found him guilty of mis-conduct. On the basis of the report of the Inquiry Officer, the Disciplinary Authority/Employer ordered his removal from service vide order dated 03.05.1991. The petitioner-workman raised an Industrial Dispute and the Appropriate Government made a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), to the Labour Court-II, Faridabad. The reference to the Labour Court was in respect to the following question:-

> "Whether the services of Shri Ram Gulam Singh were terminated or he had himself lost lien on the job having remained absent from duty. The relief, to which is he entitled as result thereof?."

After allowing opportunity to file reply to the respondent-management and rejoinder by the petitioner, the Labour Court, on the pleadings of the parties, framed the following issues:-

1. Whether the enquiry got conducted by the management was fair and proper?

2. As per reference.

Issue No.1 relating to the validity of the Enquiry conducted by the employer was treated as preliminary issue and decided by the Labour Court in favour of the employer vide its order dated 24.03.1995. After holding that enquiry held against the petitioner-workman was fair and valid, the Labour Court proceeded to answer the reference vide its impugned award dated 14.08.1996, Reference is answered against the petitioner-workman holding that he is not entitled to be reinstated into service. It is this award of the Labour Court which is impugned in this petition.

Mrs. Abha Rathore, learned counsel appearing for the petitioner-workman has urged the following three questions:-

(i) That the Labour Court has taken into consideratio extraneous material in denying reinstatement to the petitioner-workman.

(ii) That the punishment awarded to the petitioner-workman is dis-proportionate to the alleged mis-conduct.

(iii)That the petitioner has been treated differently and with hostility in awarding the punishment.

With a view to support her contention on the first question, reference is made to the impugned award wherein the Labour Court has referred to various communications written by the then Chief Minister of Haryana, some Members of Parliament and His Excellency the Governor of Haryana in favour of the petitioner. It has been accordingly urged that the

Labour Court has formulated its opinion that the petitioner has exerted political pressure upon the employer on material not part of disciplinary proceedings. This has gravely prejudiced the Labour Court in passing the impugned award declining the relief of re-instatement. It is apparent from the impugned award that the Labour Court did refer to certain communications which were produced before it by the employer to demonstrate to the Labour Court the conduct of the petitioner-workman and also to show that he had tried to influence the employer politically to condone his mis-conduct.

I have carefully considered this aspect of the matter and the material on record before the Labour Court. The conclusion arrived at by the Labour Court is not based upon this evidence. The Labour Court while deciding issue No.1 framed by it has held that a fair and proper enquiry was conducted against the workman. It was the enquiry and the order of punishment which was under challenge before the Labour Court. After holding the validity of enquiry, the only question before the Labour Court was:-

> "Whether under the facts and circumstances and the nature of the charge, the workman is entitled to any lessor punishment as awarded by the employer?"

The opinion of the Labour Court is, primarily, based upon the validity of the enquiry and the nature of the mis-conduct and not upon the so called material referred to in the impugned award. It may be relevant to mention that since this material was brought on record by the employer, it was the duty of the Labour Court to have referred to it irrespective of the

fact whether it finally relies upon such a material or not. I am not convinced with this submission of the learned counsel for the petitioner-workman.

Coming to the second question, it has been vehemently argued by the learned counsel for the petitioner-workman that the petitioner had served for a period of 18 years when suddenly his service has been brought to an end merely on account of alleged absence from duty for a period of 7 months. It has further been stated that the absence of the petitioner from duty was not deliberate or willful but on account of circumstances beyond his control in as much as the petitioner was suffering from illness and remained under treatment. No doubt, the workman attempted to project that he was ill during the relevant period and some medical prescriptions and cash memos for the purchase of medicines were placed on record. In so far as the period of absence is concerned,the employer has categorically stated and it has been established during the enquiry that he absented for a period of 11 months. The Labour Court on consideration of the material/evidence before it did not give any credence to the plea of illness of the petitioner-workman. This is a finding of fact which has not only been recorded by the Inquiry Officer but also by the Labour Court.

It is no more res-integra that this Court while exercising powers under Articles 226/227 of the Constitution of India is not to act as a Court of appeal and sit over a judgment of the Labour Court to scan and reappraise the evidence. The scope of judicial review and consequential intervention by this Court is limited to examine whether the award of the Labour Court is suffering from any legal infirmity, is in violation of the principle of natural justice or the findings are perverse. No such argument

has been advanced by the learned counsel for the petitioner-workman. I do not find any basis to arrive at a different conclusion in so far as the findings of fact recorded by the Labour Court are concerned.

Further it has been argued on behalf of the petitioner-workman that he has been given hostile and discriminatory treatment. With a view to buttress her arguments, she has referred to paragraph 12 of the writ petition, wherein it has been alleged that one Vijay Kumar, Lab Attendant, remained absent for four years without any intimation. Though enquiry was held against him but he was allowed to join and pardoned for the mis-conduct. Another example is given of one Daya Nand who also allegedly remained absent without intimation. Charge against him for remaining absent from duty was proved against him but a punishment of forfeiture of only two increments with cumulative effect was awarded and the period of absence has been treated as leave without pay. A copy of the order passed in the case of Daya Nand is also placed on record as Annexure P-4. From the perusal of the order Annexure P-4, it is apparent that Daya Nand was the employee of Cooperative Milk Products Union Limited, Milk Plant, Ballabgarh. He was not an employee of the Haryana Dairy Development Cooperative Federation Limited. The respondents have also replied that he was an employee of the different organisation and the respondent management is not concerned with the same. However, the reply is silent so far Vijay Kumar is concerned who allegedly remained absent for four years but retained in employment.

It has been lastly argued with vehemence that the petitioner has served the respondent-management for a period of 18 years, and deserves leniency and compassionate view. According to the learned

counsel, the petitioner-workman should be awarded any other lessor punishment than the termination of service which amounts to scrapping his entire service spreading over a long period of 18 years. The jurisdiction of the Labour Court or the High Court for judicial intervention in the quantum of punishment awarded in disciplinary proceedings to an employee came up for consideration in various judgments before the Hon'ble Apex Court. So far as the powers of the Labour Court, particularly after the introduction of Section 11-A in the Act is concerned, the Hon'ble Supreme Court has considered the same in the case of Mahindra and Mahindra Ltd. Vs. N.B. Narawade, 2005 (3), S.C.C., 134, and held as under:-

> "It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman

which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

In the case Hombe Gowda Educational Trust and Another Vs. State of Karnataka and others, 2006 (1) SCT, 197, the Hon'ble Apex Court held as follows:-

> "The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.
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> This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of

punishment."

The Hon'ble Apex Court after laying down broader principles regarding judicial review in the case of B.C. Chaturvedi Vs. Union of India and others, 1995 (6) SCC, 749 held as follows:-

> " .....The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In the case of State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, 2006 (1) SCT, 820, the Hon'ble Apex Court opined as under:-

> "It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionately can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering

> with the quantum of punishment, unless it is found to be shocking to one's conscience."

There are various cases wherein absence from duty is considered to be a gross misconduct. Reference may be made to Anand Regional Co-op. Oil Seedgrowers Union Limited Vs. Shailesh Harshadbhai Shah, 2006 (4) SCT, 1, and a Division Bench judgment of this Court reported as Karnail Singh Vs. The State of Punjab, 1993 (3) P.L.R.117, wherein this Court observed as under:-

> ".....The petitioner habitually remained absent from duty. He did not reform himself. The record which has been alluded to by the appellate authority reveals that on previous occasions too the petitioner was awarded punishment on eight different occasions for remaining absent from duty. His absence from duty continuously for 5 months and 5 days was not an isolated Act. There had been repeated acts of remaining absent from duty for which he has been awarded punishment and the past record was taken into account while awarding punishment of dismissal from service. On the facts of the instant case, we do not find that the action of the respondents suffers from any infirmity."

There is no dispute that the absence from duty is a gross misconduct. In the instant case, the employee has remained absent for a period of 11 months as observed by the Inquiry Officer and the Labour Court. This misconduct has been established against him. Nothing has been

brought on record which may persuade this Court to interfere with the quantum of punishment except one allegation made in paragraph 12 of the writ petition, referred to above, wherein one Vijay Kumar who remained absent from duty for a period of four years, has been retained in service. This fact has not been denied. It is also relevant to note that the respondents have also not placed any material on record or even a plea in the reply to suggest that the circumstances under which Vijay Kumar was retained in service are distinguishable and different from the case of the petitioner in any respect. This brings the case of the petitioner at par or at least similar to that of Vijay Kumar. In a similar circumstances wherein a different treatment is given to a similarly situated person, the Hon'ble Apex Court in Anand Regional Coop. Oil Seedsgrower's Union Ltd. Versus Shailesh Kumar Harshadbhai Shah, (2006) 6 Supreme Court Cases, 548, held as under:-

> "27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.
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> 28. The First respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the first respondent has

succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

Keeping in view the fact that the employer has adopted different standards for its employees in awarding punishments and the fact that the petitioner-workman has rendered 18 years of service, I am of the considered opinion that this is a fit case where the punishment awarded needs to be re-looked by the employer.

In view of the above, I allow this petition, set aside the order of termination and remand the case back to respondent No.1 with a direction to re-examine the question of quantum of punishment and award any other lessor punishment including compulsory retirement from service. Let this decision be taken by respondent No.1 within a period of three months from the date of receipt of a certified copy of this order. No costs.

July 30, 2007. (PERMOD KOHLI)
BLS JUDGE

Note: To be referred to the Reporter. YES